

November 4, 2021

The regular meeting of the County Commissioners of Allegany County was held in the Commissioners' Meeting Room, Allegany Room 100, 701 Kelly Road, Cumberland, at 5:00 p.m. on the above date. The following were present: Commissioner Jacob C. Shade; Commissioner Creade V. Brodie, Jr.; Commissioner David J. Caporale; County Administrator Jason M. Bennett; and County Attorney T. Lee Beeman, Jr.

The Pledge of Allegiance was recited by those present.

MOTION

There were no additions or deletions to the agenda.

MOTION

Upon Motion by Commissioner Brodie, and seconded by Commissioner Caporale, the Minutes of the October 21, 2021 public business meeting were approved by the Board of County Commissioners.

PRESENTATION

Item 1 – 2021 Veteran's Day Observance – Recognition of the Service of Allegany County Government Employees and Members of the General Public – Kristi D. Liller, Director of Human Resources, read a prepared statement in recognition of the County's Veterans of the Armed Forces, including both County employees and members of the general public, and including all branches of the Armed Forces.

Before moving on to the Consent Agenda, Commissioner Shade read two letters into the record. Copies of these letters are attached to and made a part of these Minutes. The first letter Commissioner Shade read was addressed to the State Superintendent of Schools, Mr. Mohammed Choudhury, for signature by Commissioner Shade.

Commissioner Shade asked County Attorney Lee Beeman to introduce the second letter to be read, which was addressed to Governor Lawrence J. Hogan, Jr., for signature by all three of the County Commissioners. Attorney Beeman explained that this letter concerned a proposed resolution by The National Opioid Litigation, which Allegany County joined into very early on. He added that the County is represented in the litigation by Attorney Bruce Poole of Hagerstown, Maryland, who also represents the City of Cumberland, City of Frostburg, and a number of other Counties and municipalities throughout the State of Maryland. Attorney Beeman further explained that, at the present juncture, a number of the major defendants in the litigation have declared bankruptcy, and some are offering resolution; and the Courts are working through proposed settlement agreements and settlement conferences with the major parties. He went on to say that Attorney Poole represents a number of Maryland plaintiffs, and he has teamed with larger national counsel that represents a large class of government entities like Allegany County.

Attorney Beeman pointed out that presently, the State of Maryland, through the Attorney General's Office, is working on a separate projected resolution of the litigation that is out there; and Allegany County has received advice, through Attorney Poole, that he believes that the proposed actions by the Attorney General of Maryland and by other Attorney Generals would not be beneficial to Allegany County and to the other Counties and municipalities that he represents. For that reason, Mr. Poole has provided legal counsel to Allegany County and requested that the Allegany County Commissioners send a letter to Attorney General Frosh and to the State of Maryland asking that he not undertake the current path of resolution that they have proposed. Attorney Beeman explained that, essentially, the Attorney General is proposing that a majority of the settlement proceeds be put in at the State level and that the State be allowed to divvy up the funds as they believe would be appropriate. Attorney Beeman told the Commissioners that, in this instance (and not speaking for other localities), Allegany County Government has expended a tremendous amount of time, effort and man-hours into compiling the information to quantify the County's damages, and has been one of the most thorough of the plaintiffs. He added that a letter as suggested by Attorney Poole has been prepared for the Commissioners' signature.

Commissioner Shade pointed out that the opioid litigation has been going on since May of 2018, and that the Commissioners made sure to retain a very good law firm to represent Allegany County in the proceedings, at no cost to the County unless there was a settlement made. He then read the letter, addressed to Governor Lawrence Hogan, into the record.

When Commissioner Shade finished reading the letter addressed to Governor Hogan, Commissioner Caporale asked for clarification that the Attorney General is making a recommendation, and that this is not a state mandate. He asked if the State could take the funds from the County. Attorney Beeman explained that the litigation group of which Allegany County is

a part represents a number of the class action litigants, but this will ultimately be something that is put to a vote as to a total settlement. He pointed out that Allegany County is part of a larger group, and ultimately cannot be forced to vote one way or another. Attorney Beeman added that if a majority of the class action litigants would choose to follow a particular proposal, if the State would strong-arm other proponents into resolving the case in that manner, then the County could essentially also be strong-armed. Commissioner Caporale voiced some additional concerns and asked about the status of the City of Cumberland, and Attorney Beeman discussed these issues with him.

CONSENT AGENDA

As recommended by the County Administrator

Upon Motion by Commissioner Caporale, seconded by Commissioner Brodie, and Motion carried, the Board of County Commissioners adopted the Consent Agenda as recommended by the County Administrator.

Item 2 – Jade Meadow Solar Project Tax Stabilization – Board of County Commissioners authorized the Jade Meadow Solar Project Tax Stabilization agreement with Point Reyes Energy Partners in the amount of \$100,000 annually for 30 years.

Item 3 – US General Services Administration Lease No. GS-03B-07330 Amendment No. 7 – Board of County Commissioners authorized the President of the County Commissioners to sign Lease Amendment No. 7 with US General Services Administration to incorporate FAR Clause 52.204-25. Clause 52.204-25 prohibits contracting for certain telecommunications and video surveillance services or equipment for the FEMA Cumberland Logistics Center.

Item 4 – Fiscal Year 2022 Operating Assistance Grant Agreement – Board of County Commissioners authorized the President of the County Commissioners to sign the FY 2022 Public Transportation Operating Assistance Grant Agreement in the amount of \$1,293,434. The grant agreement is to provide financial assistance to Allegany County to cover the capital, operating, and planning costs for public transportation services.

Item 5 – Maryland Emergency Service Transporter Supplemental Payment Program – Board of County Commissioners authorized the Allegany County Department of Emergency Services to enter into an Agreement with Public Consulting Group, LLC to participate in the Maryland Emergency Service Transporter Supplemental Payment Program to provide medical services to Medicaid and, as applicable, any additional costs.

Item 6 – Community Promotions – Board of County Commissioners authorized the Finance Department to remit \$500 from the Community Promotions Account to support Bishop Walsh School to host the first National Interscholastic Basketball Conference. This is a premiere high school conference in the United States. Bishop Walsh was selected to participate in the National Nike Elite Basketball League event which will be covered and televised by ESPN bringing national spotlight to Cumberland, Maryland. It will be held December 2-4, 2021 at Allegany College of Maryland.

Item 7 – Allegany County Board of Elections Memorandum of Understanding for Early Voting – Board of County Commissioners authorized the President of the County Commissioners to sign the Memorandum of Understanding with the Allegany County Board of Elections and authorized use of the Allegany County Office Complex for the process of Early Voting in Allegany County for the Primary and General Elections in 2022.

County Administrator Jason Bennett had no further comments to make at this evening's meeting.

County Attorney Lee Beeman had no further comments to make at this evening's meeting.

Commissioners' statements, comments, recognition –

Commissioner David Caporale had no further comments to make at this evening's meeting.

Commissioner Creade Brodie had no further comments to make at this evening's meeting.

Commissioner Jacob Shade had no further comments to make at this evening's meeting.

Constituents – In order of sign-up sheet –

Mr. Jack Nightengale, of 32 Allegany Street, Lonaconing, Maryland, asked about the status of his concerns discussed at previous Commissioners public meetings, regarding the use of Jackson Mountain Road to transport coal down the mountain. Mr. Nightengale said that he had not yet heard back from anyone.

County Administrator Jason Bennett told Mr. Nightengale that the issue he had brought up was taken to the Traffic Advisory Committee, which then took it under advisement and reviewed it. Administrator Bennett said that now a traffic study needs to be done. He explained that since the road in question is actually within the limits of the Town of Lonaconing, the Town needs to commission that study. Mr. Bennett added that work on the traffic study could potentially be commencing soon. He asked Dan DeWitt, County Engineer, present in the back of the meeting room, for confirmation of that. Mr. DeWitt, speaking from the back, offered some additional details about the traffic study and confirmed that it needs to be commissioned by the Town of Lonaconing, not the County. He told Mr. Nightengale that the recommendation of the Traffic Advisory Committee would go to the Town of Lonaconing.

Commissioner Shade asked if the traffic study would be through the Traffic Advisory Committee. Mr. DeWitt replied that he understood, through his involvement with the Committee, that the Committee would recommend to the Town of Lonaconing that they obtain a consultant to do the traffic study. Commissioner Shade also confirmed with Mr. DeWitt that there is nothing further for the Traffic Advisory Committee to do about this. He asked for a letter to be put together, for either Commissioner Shade or Administrator Jason Bennett to sign, to send to the Town of Lonaconing to let them know about the Traffic Advisory Committee's recommendation.

Mr. Nightengale then distributed some photographs to the Commissioners for their information. He described the photographs in some detail.

Reminders/Upcoming Meetings –

Next Public Business Meeting – Thursday, November 18, 2021, 5:00 p.m.

Announcement – Allegany County Government Schedule (See News Release)

ADJOURNMENT:

There being no further business to come to the attention of the Board, the meeting was adjourned at 5:40 p.m.

Jacob C. Shade, President

True Copy
Attest:

Cynthia A. Young
Recording Secretary



ALLEGANY COUNTY, MARYLAND

The Board of County Commissioners

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Jason M. Bennett, CPA, *County Administrator*
T. Lee Beeman, Jr., *County Attorney*

November 4, 2021

The Honorable Lawrence J. Hogan, Jr.
Governor of Maryland
100 State Circle
Annapolis, MD 21401

Dear Governor Hogan:

As representatives of the citizens of Allegany County, we request that you intervene with Attorney General Brian Frosh as to his proposed settlement of the opioid litigation involving the three largest opioid distributors AmerisourceBergen, Cardinal Health, and McKesson, as well as the manufacturer Johnson & Johnson. Specifically, we request that you assist us in securing a split of proceeds that gives 85% to localities and 15% to the state.

Attorney General Frosh's proposal places the bulk of the money in the hands of state government and decidedly leaves the less populated counties and towns in a difficult position to obtain any recovery/relief. Under Attorney General Frosh's proposal, all counties with a population of under 240,000 would have to apply to the state for funds in excess of 15% of the total settlement. This puts even more burden on rural and outer suburban counties and localities, and does not take into consideration the fact that those local governments have less capacity to fund their own recovery from the damage which opioids have caused.

Allegany County is Maryland's poster county for the opioid epidemic. Whether through published research and reports by Johns Hopkins' Bloomberg School of Public Health, data from the national ARCOS database and the Centers for Disease Control & Prevention, or news reports and editorials such as those published through *The Baltimore Sun*, it is overwhelmingly evident we have been dealing with the opioid epidemic since 2007. In 2016, the CDC recorded Allegany County has having an opioid prescription rate of 127.2 per 100 people—the highest in the state that year and more than one prescription for every man, woman and child in the county. For that same year, the prescription rates in Baltimore City were 71.4 and Anne Arundel County was 69.8.¹

The County and its municipalities of Cumberland and Frostburg have been litigants in the national litigation multi-district litigation (MDL) 2804 since May 2018. Attorney General Frosh did not choose to file suit on the State's behalf against any of the manufacturers and distributors but for Purdue Pharma, nor did he move to file suit against any of the pharmacy defendants. Yet he would take 85% of the money that has been offered due to the participation of Allegany County,

¹ <https://www.cdc.gov/drugoverdose/rxrate-maps/county2016.html> (Accessed November 1, 2021)

Cumberland, and Frostburg as Plaintiffs in the MDL against the aforementioned Defendants and then require us to write a grant in the hope of receiving monies from a future Western Maryland regional fund. There is no guarantee as to how the money in any regional fund pool will be distributed and, thus, there could be a chance Allegany, Cumberland, and Frostburg would receive nothing or a pittance.

Our initial Plaintiff Fact Sheet and Amended Plaintiff Fact Sheets filed in the national litigation total 2,955 pages of evidence as to the burden of the opioid epidemic on our citizens, law enforcement and first responders, health system, public school system, economic development efforts, etc.. here is not an area of necessary public services where the County hasn't diverted significant budget funding to a funding need created by the opioid epidemic. We have been forfeiting our future to the diversion of funding and clean up needed for this epidemic and, far better than Attorney Frosh, we know where we need to apply the settlement funds and in what measure.

Governor, given turning the tide in the opioid epidemic has been a personal mission for you and your administration, you know how hard the epidemic has affected Allegany County as well as all that we have done to fight it and protect our citizens. It is Allegany County and its municipalities that have suffered and poured all into the fight against opioids in our county, and it is Allegany County, the City of Cumberland, and Frostburg that need to directly receive and apply the settlement monies due them as Plaintiffs.

Other states have recognized the opioid problem is predominantly a local one and have proposed settlements whereby 70% to 100% of the distributions go to their localities. North Carolina is giving 85%, Wisconsin 70%, and Louisiana 100%. Other states currently are contemplating similar proportions. Attorney General Frosh should amend his proposal to a similar distribution plan.

We ask that you ensure this settlement is not a repeat of the 1998's tobacco debacle. Governor, you are not one to ignore rural Maryland nor assume we cannot manage our own opioid abatement needs. We would appreciate it if you stood up for rural Maryland and Allegany County. We, of course, are available to discuss this in further detail or to be of assistance in any way, as is our attorney, Bruce Poole.

Many thanks for your consideration.

Sincerely,

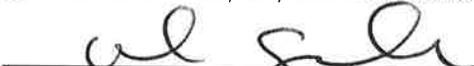
The Board of County Commissioners



Jacob C. Shade, President



Creade V. Brodie, Jr., Commissioner



David J. Caporale, Commissioner

Attachment



ALLEGANY COUNTY, MARYLAND

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November 4, 2021

Office of Mr. Mohammed Choudhury, State Superintendent of Schools
Nancy S. Grasmick State Education Building
200 West Baltimore Street
Baltimore, MD 21201

Mr. Choudhury,

I want to first thank you for visiting Allegany and Garrett County public schools last month and taking time to meet with teachers and school leadership. We need decision makers to speak openly with those on the front lines. Allegany County faces unique challenges that do not resemble those faced by larger, urban jurisdictions. We lack the network of educational resources found in wealthier communities. We are not Montgomery County. We are not Baltimore County. Local officials, teachers, and parents in Western Maryland feel excluded from the decisions that impact our students. In September, the State Board of Education mandated masks for students across Maryland after ordering each local elected board of education to make their own determination. There has been inconsistent messaging on how local jurisdictions can or should handle the pandemic. For our students, we need to do better. We need a clear message. We need local control. On behalf of the Board of Commissioners for Allegany County, I encourage you to return authority on masks in schools to local jurisdictions at the State Board of Education's meeting in December.

We have known from the beginning that school aged students have very little risk of severe illness from Covid-19 compared to adults. Hospitalization and death rates among children remain extremely low. Yet the classrooms, sports teams, and extracurricular activities that once provided structure to over 8,000 students in Allegany County remain upended, even as other institutions return to normal. The pandemic has impacted all of us, but it is our students who continue to lose. Since the pandemic began, more children have died by suicide than from Covid-19 in our country. The CDC has reported a dramatic increase in hospitalizations related to childhood suicide attempts. These hospitalizations were up 40% during the last academic year when lockdowns kept students out of school. With every lockdown, mandate, and quarantine, there is a cost. We cannot let fear blind us from the mental health crisis we are fostering.

Maryland was the third last state to return to the classroom. I agree with comments you made last month: "a lot of damage was done to underserved kids." In a county that faces problems of addiction, hunger, and child poverty, we understood the dangers posed to underserved kids

firsthand. That's why Allegany County was one of the first counties in Maryland to return to the classroom, well ahead of most of the state. The return to school was meant to signal a return to normalcy. But with statewide mandates and arbitrary quarantine rules, this school year is anything but normal. Students are sent home with no virtual learning option. They are counted as absent. They are not allowed to return to class even with a negative Covid test. Students are expected to wear masks all day, every day, even if they are fully vaccinated. And for how long? Will December's meeting be another shifted goalpost? We need a transparent timeline. We need clear metrics. And most importantly, we need these decisions to be made locally.

I trust that our local officials, teachers, and parents know what is best for our students. Returning all our kids to school full-time and to the sports and activities that keep them engaged and healthy should be the top priority. Do not let fear and an excess of caution distract from the needs and the mental health of our students. Once again, I strongly encourage you to return authority on masks in schools to local jurisdictions at next month's State Board of Education meeting.

Thank you,

A handwritten signature in black ink, appearing to read 'J. Shade', with a long horizontal flourish extending to the right.

Jacob C. Shade, President
Board of Allegany County Commissioners